United States Department of Labor
Employees' Compensation Appeals Board

NANCY J. BRANDON, Appellant	)	
and	)	**Docket No. 06-293**
	)	**Issued: March 13, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Indio, CA, Employer	)	

Appearances:
Nancy J. Brandon, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 21, 2005 appellant filed a timely appeal of the August 4, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant is entitled to a schedule award.

FACTUAL HISTORY

Appellant, a 62-year-old modified letter carrier, has an accepted traumatic injury claim for cervical and lumbar strains, which arose on April 27, 2002 due to an employment-related

motor vehicle accident.[1] On July 12, 2002 appellant returned to part-time, limited-duty work and she received appropriate wage-loss compensation.

On June 28, 2003 appellant filed a claim for a schedule award. The Office asked appellant's treating physician, Dr. Douglas J. Roger, to submit a report addressing the existence and extent of any employment-related permanent impairment affecting appellant's upper and lower extremities.[2] Although Dr. Roger continued to restrict appellant to limited-duty work, he did not provide the requested information regarding any permanent impairment.[3]

Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on February 23, 2004. He found that appellant's cervical and lumbar sprains had resolved and that she could resume her usual job.[4] In a February 24, 2004 report, Dr. Dorsey further indicated that appellant did not sustain any permanent impairment as a result of her April 27, 2002 work injury. He explained that there was no significant pain, sensory deficit or motor impairment of the extremities as a result of the job-related neck and lower back injury.

Dr. Roger reviewed Dr. Dorsey's opinion and, in a report dated May 21, 2004, indicated that appellant continued to experience residuals of her April 27, 2002 employment injury and that she had a permanent impairment. Dr. Roger further indicated that appellant had reached maximum medical improvement. Although he stated disagreement with a number of Dr. Dorsey's findings, Dr. Roger did not provide an impairment rating.

In a decision dated August 2, 2004, the Office denied appellant's claim for a schedule award.

Appellant requested a hearing, which was held on April 26, 2005. Dr. Roger provided a June 24, 2005 impairment rating in which he found eight percent whole person impairment based on a diagnosis-related estimate (DRE) Category II, lumbar spine injury. He similarly found eight percent whole person impairment with respect to appellant's cervical spine injury. According to Dr. Roger, appellant had a combined whole person impairment of 12 percent. However, he did not identify any specific impairment with respect to appellant's upper and lower extremities.

By decision dated August 4, 2005, the Office hearing representative affirmed the August 2, 2004 denial of appellant's claim for a schedule award.

[1] At the time of her April 27, 2002 injury, appellant was performing limited-duty work due to a prior injury to her right upper extremity.

[2] Dr. Roger is Board-certified in orthopedic surgery.

[3] On November 19, 2003 Dr. Roger advised that appellant could perform full-time limited-duty work.

[4] Dr. Dorsey noted degenerative changes of the cervical and lumbar spine. However, he found that appellant's April 27, 2002 employment injury neither caused nor materially exacerbated this condition.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[5] No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.[6] The Act's list of schedule members includes the eye, arm, hand, fingers, leg, foot and toes.[7] The Act also specifically provides for compensation for loss of hearing and loss of vision.[8] By authority granted under section 8107(c)(22) of the Act, the Secretary of Labor added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the list of schedule members.[9]

The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[10] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[11]

ANALYSIS

Appellant's treating physician, Dr. Roger, found a combined 12 percent impairment of the whole person under Tables 15-3 and 15-5, A.M.A., *Guides* 384, 392. These particular tables provide impairment ratings for injuries due to the cervical and lumbar spine. Neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.[12] Therefore, appellant is not entitled to a schedule award based on Dr. Roger's estimate of 12 percent whole person impairment due to a DRE Category II, lumbar and cervical spine injuries. To the extent that appellant's accepted back injury results in permanent impairment to either her upper or lower extremities, an award would be appropriate under the Act. However, Dr. Roger did not identify any impairment to either the upper or lower extremities. Accordingly, the Board finds that the medical evidence of record fails to establish

[5] 5 U.S.C. § 8107(a), (c).

[6] *Henry B. Floyd, III,* 52 ECAB 220, 222 (2001).

[7] 5 U.S.C. § 8107(c).

[8] *Id.*

[9] 20 C.F.R. § 10.404(a) (1999).

[10] 20 C.F.R. § 10.404 (1999).

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

[12] *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

that appellant has permanent impairment of a schedule member. The Office, therefore, properly denied appellant's claim for a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board